

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
REGIONAL BENCH : ALLAHABAD**

**E/3546/2010-EX[DB]**

(Arising out of Order-in-Original No.17/COMMR./GZB/2010 dated 20.08.2010 passed by Commissioner, Customs, Central Excise & Service Tax, Ghaziabad.)

M/s. Dabur India Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri B.L.Narasimhan (Advocate) & Shri Ayush Agarwal (Advocate) for the Appellant (s)

Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

**CORAM:**

SHRI ASHOK JINDAL, HON'BLE MEMBER(JUDICIAL)

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 27.12.2018

FINAL ORDER NO.72935/2018

**Per Ashok Jindal :**

The appellant is engaged in the manufacture of various products. The dispute before us with regard to the classification of the product namely Hajmola Candy. Initially the appellant claimed the classification of Hajmola Candy under chapter 30 of the Central Excise Tariff Act, 1985 and same has attained finality by order of this Tribunal dated 25.03.1994 reported in 1994 (71) E.L.T. 1069 holding that Hajmola Candy contains 25% active ingredients and 75% sugar merits classification under chapter heading 3003.30 as Ayurvedic Medicine and

not under chapter heading 1704.90 as sugar confectionary of Central Excise Tariff Act, 1985. Thereafter the appellant continued to classify Hajmola Candy under chapter 30 of Central Excise Tariff Act. Vide show cause notice dated 05.04.2000 in respect of the appellant's Baddi Unit, the Revenue sought to re-classify the said product under chapter heading 2108.90 as miscellaneous edible preparations. The matter was adjudicated and re-classification was vacated. The said order was challenged by the Revenue before this Tribunal and this Tribunal vide its final order reported in 2002 (144) ELT 365 held that Hajmola Tablets (Baddi Unit) is classifiable as Ayurvedic Medicine under chapter 30 of the Central Excise Tariff Act, 1985. The said order has been affirmed by the Hon'ble Apex Court reported in 2002 (146) ELT A-311. Another show cause notice dated 14.10.1998 proposing to finalise the provisional assessment to classify the product namely Hajmola Candy under chapter heading 1704.90 was pending and same was finalized by confirming the classification under heading 1704.90 vide Order-in-Original No.49/GZB-II/99. The said order was challenged before the learned Commissioner(Appeals), who confirmed the order of the adjudicating authority vide order dated 16.01.2003 holding that the Hajmola Candy manufactured by Ghaziabad unit have merit classification under chapter heading 1704.90. The said order was not challenged by either of the sides and attained finality and appellants started classifying their product under heading 1704.90 as sugar confectionary w.e.f. 01.03.2003. Thereafter another show cause notice which is in question was issued on 10.10.2005 for the period

September 2004 to August 2005 proposing the classification of Hajmola Candy under chapter 3003.39 for the period September 2004 to February 2005 and under chapter 30039011 for the period March 2005 to August 2005. The adjudicating authority confirmed the classification proposed in the show cause notice. Against the said order, the appellant is before us.

2. The learned Counsel for the appellant submits that the re-classification will operate only prospectively from the date of issuance of show cause notice and no demand for the earlier period can be raised as held by the Hon'ble High Court of Bombay in the case of Eco Valley Farms & Foods Ltd. v. Commissioner of C.Ex., Pune-III [2013 (290) E.L.T. 49 (Bom.)]. He further submitted that the order of Commissioner(Appeals) would not fall within the ambit of the scope of the word 'approval assessment or acceptance' referred under section 11A of Central Excise Act, 1944, therefore, the demand is not related to any 'approval, acceptance or assessment' under the provisions of Act or the Rules. He further submits that classification cannot be challenged by issuance of show cause notice when Order-in-Appeal dated 16.01.2003 was not challenged in appeal by the department. To support he relied on the decision in the case of Commissioner of C.Ex., Shillong v. Jellalpole Tea Estate [2011 (268) E.L.T. 14 (Gau.)]. In view of this it is prayed that the impugned order is set aside.

3. On the other hand the learned A.R. reiterated the findings of the impugned order.

4. Heard the parties and considered the submissions.

5. On consideration of the submissions made by both the sides fact of the case are not in dispute that the merit classification of Hajmola Candy in question is under chapter heading 3003.90 of Central Excise Tariff Act, 1985 as Ayurvedic Medicine, but while finalizing the assessment for the appellant the learned Commissioner(Appeals) vide its order dated 16.01.2003 held merit classification under chapter heading 1704.90 as against claim of the appellant under chapter 30 and the said order of the learned Commissioner(Appeals) was not challenged by either of the sides. Only on 10.10.2005, a show cause notice was issued to classify the product Hajmola Candy for the period September 2009 to August 2005 under chapter heading 3003.90 of Central Excise Tariff Act, 1985 as Ayurvedic Medicament. Therefore, the short issue raised before us is whether the show cause notice dated 10.10.2005 can be issued to the appellant for the period September 2004 to August 2005 or not?

6. We find that similar issue came up before the Hon'ble High Court of Bombay in the case of Eco Valley Farms & Foods Ltd. (supra) wherein the Hon'ble High Court has observed as under:-

*"33. The fact that Section 11A of the 1944 Act as amended by the Finance Act 2000 empowers the Central Excise Officer to demand excise duty for a period of one year prior to the issuance of show cause notice even if duty was not paid on account of approved classification list/price list/assessment order, it does not mean that the AO can disregard the orders passed by the higher authorities. By amending Section 11A, the legislature has empowered the AO to demand duty not paid on account of erroneous approval of classification list/price list/assessment order and the legislature has not empowered the AO to demand duty if he considers that the duty was not paid or payable on*

*account of the erroneous order passed by the Appellate Authority or the competent Court. Therefore, the AO was not justified in demanding duty on DTA clearances of fresh mushrooms contrary to the decision of the Commissioner of Central Excise (A) dated 27<sup>th</sup> May 2004, especially when the Revenue has accepted the said decision of Commissioner of Central Excise (A)."*

7. In view of the decision of the Hon'ble High Court of Bombay in the case of Eco Valley Farms & Foods Ltd. (supra) we held that as Revenue themselves has accepted the merit classification under chapter heading 1704.90 as sugar confectionary, in that circumstances, the show cause notice cannot be issued for the earlier period and the show cause notice can be issued for prospective period.

8. We further find that the classification as approved by the learned Commissioner(Appeals) vide its order dated 16.01.2003 has attained finality and not been challenged, in that circumstances, in the light of the decision of the Hon'ble High Court of Gauhati in the case of Jellalpore Tea Estate (supra), the show cause notice is not sustainable.

9. In view of the above observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open Court.)

SD/  
**(ANIL G. SHAKKARWAR)**  
**MEMBER(TECHNICAL)**

SD/  
**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**

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